IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6289 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HUSSAIN GULAM MOHAMMED NAKHUDA

Versus

STATE OF GUJARAT

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Appearance:

MS SUMAN PAHWA for Petitioner

MR VM PANCHOLI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the validity of the order dated 25th June, 1999, made by the Commissioner of Police, Surat, under the powers conferred upon him under

section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as `the Act'), against the petitioner. Along with the order of detention, the petitioner has also been served with the grounds of detention. The grounds of detention suggest that on 12th June, 1999, an offence punishable under sections 406, 420 and 120-B IPC has been registered against the petitioner, in respect of which, the petitioner was arrested and released on bail on 20th June, 1999. Besides the aforesaid offence registered against the petitioner, two witnesses have given statements in respect of anti-social activities of the petitioner, which cause breach of the public order. The petitioner is, therefore, held to be a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are held to be prejudicial to the maintenance of public order.

The word 'dangerous person' has been defined under section 2 (c) of the Act, to mean - "a person who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter-V of the Arms Act, 1989 ". Hence, the person, unless he is habituated to commit crime, or attempt to commit or abets the commission of offence, he can not be said to be a 'dangerous person'. The word 'habitually' pre-supposes a repeated action i.e. unless a person is found to be repeatedly indulging into commission of the offence or attempts to commit or abets the commission of offence punishable under Chapter-XVI or Chapter-XVII of the IPC, or an offence punishable under Chapter-V of the Arms Act, 1959, he can not be said to be a a `dangerous person' warranting an action under the Act.

In the present case, the petitioner is alleged to have committed an offence, for which a complaint is lodged against him on 12th June, 1999, as aforesaid. However, by commission of the said offence, the petitioner can not be said to be habituated to commit offences. The petitioner, therefore, can not be said to be a 'dangerous person' within the meaning of section 2 (c) of the Act. In my view, the action taken under section 3 of the Act by the Detaining Authority is wholly without the authority of law. The impugned order, therefore, requires to be quashed and set aside.

Petition is accordingly allowed. The impugned order dated 25th June, 1999, is quashed and set aside.

The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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JOSHI